

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

James H. Treesh, Jr., :  
Plaintiff, : Case No. 2:10-cv-211  
v. : Judge Smith  
Leha Bobb-Itt et al., :  
Defendants. :

ORDER

On May 26, 2010, the Court ordered that Mr. Treesh's complaint be amended as of right to correct the spelling of a defendant's name and to add a new defendant. The Court, however, denied his motion for leave to amend to add sixteen plaintiffs since none of these proposed parties had signed the complaint. Beginning on August 12, 2010, and continuing through November 9, 2010, Mr. Treesh has filed twelve additional motions for leave to amend his complaint. For the following reasons, the August 12, 2010 motion (#36) will be granted in part and denied in part, the September 21, 2010 motion (#41) will be granted, and the remaining motions (## 43, 46, 47, 48, 49, 50, 51, 53, 54, 56) will be denied.

I.

Fed.R.Civ.P. 15(a)(2) states that when a party is required to seek leave of court in order to file an amended pleading, "[t]he court should freely give leave when justice so requires." The United States Court of Appeals for the Sixth Circuit has spoken extensively on this standard, relying upon the decisions of the United States Supreme Court in Foman v. Davis, 371 U.S. 178 (1962) and Zenith Radio Corp. v. Hazeltine Research, Inc., 401 U.S. 321 (1971), decisions which give substantial meaning to the "when justice so requires." In Foman, the Court indicated

that the rule is to be interpreted liberally, and that in the absence of undue delay, bad faith, or dilatory motive on the part of the party proposing an amendment, leave should be granted. In Zenith Radio Corp., the Court indicated that mere delay, of itself, is not a reason to deny leave to amend, but delay coupled with demonstrable prejudice either to the interests of the opposing party or of the Court can justify such denial.

Expanding upon these decisions, the Court of Appeals has noted that:

[i]n determining what constitutes prejudice, the court considers whether the assertion of the new claim or defense would: require the opponent to expend significant additional resources to conduct discovery and prepare for trial; significantly delay the resolution of the dispute; or prevent the plaintiff from bringing a timely action in another jurisdiction.

Phelps v. McClellan, 30 F.3d 658, 662-63 (6th Cir. 1994) (citing Tokio Marine & Fire Ins. Co. v. Employers Ins. of Wausau, 786 F.2d 101, 103 (2d Cir. 1986)). See also Moore v. City of Paducah, 790 F.2d 557 (6th Cir. 1986); Tefft v. Seward, 689 F.2d 637 (6th Cir. 1982). Stated differently, deciding if any prejudice to the opposing party is "undue" requires the Court to focus on, among other things, whether an amendment at any stage of the litigation would make the case unduly complex and confusing, see Duchon v. Cajon Co., 791 F.2d 43 (6th Cir. 1986) (per curiam), and to ask if the defending party would have conducted the defense in a substantially different manner had the amendment been tendered previously. General Elec. Co. v. Sargent & Lundy, 916 F.2d 1119, 1130 (6th Cir. 1990); see also Davis v. Therm-O-Disc, Inc., 791 F.Supp. 693 (N.D. Ohio 1992).

The Court of Appeals has also identified a number of additional factors which the District Court must take into account in determining whether to grant a motion for leave to

file an amended pleading. They include whether there has been a repeated failure to cure deficiencies in the pleading, and whether the amendment itself would be an exercise in futility. Robinson v. Michigan Consolidated Gas Co., 918 F.2d 579 (6th Cir. 1990); Head v. Jellico Housing Authority, 870 F.2d 1117 (6th Cir. 1989). The Court may also consider whether the matters contained in the amended complaint could have been advanced previously so that the disposition of the case would not have been disrupted by a later, untimely amendment. Id. It is with these standards in mind that the instant motions to amend will be decided.

## II.

### A. The August 12, 2010 Motion to Amend Complaint

In the first of the new motions (#36), Mr. Treesh seeks to clarify that he is suing the defendants in their individual capacity and to add imminent danger and deliberate indifference claims. In their memorandum in opposition (#44), the defendants do not oppose granting Mr. Treesh leave to amend his complaint to specify that he is suing them in their individual capacity. They do, however, oppose granting Mr. Treesh leave to amend his complaint to add the imminent danger and deliberative indifference claims on the grounds that such claims are unfounded, implausible, and speculative. They also argue that proof of these proposed new claims will require proof on an entirely different set of facts, and that Mr. Treesh should not be allowed to assert such loosely-connected claims.

The imminent danger and deliberate indifference claims, as described in the motion to amend, appear to be unrelated to the allegation in his original complaint that defendants were deliberately indifferent to his medical needs by depriving him of pain medication (ibuprofen) for a period of ten days. Rather, the claims sought to be added are based on Mr. Treesh's allegations that he was attacked on February 15, 2010, and on

July 6, 2010, by other inmates who were recruited to perform violent acts on him.

Mr. Treesh does not identify the person or persons who allegedly recruited the two inmates, whether these unidentified persons have already been named as defendants in this case, or the basis for his knowledge that the inmates were, in fact, so recruited. He also does not explain how the proposed imminent danger and deliberate indifference claims relate to the gravamen of his complaint that defendants have violated his constitutional right to engage in Native American religious practices such as the wearing of head gear or feathers in his hair.

B. The September 21, 2010 Motion to Amend Complaint

By this motion (#41), Mr. Treesh seeks to withdraw any claim for class-wide relief. He also wants to allege additional facts showing that his right to practice his Native American religion and to participate in various ceremonies has been heavily infringed. The defendants have not opposed the leave to amend in this instance.

C. The October 5, 2010 Motion to Amend Complaint

Here, Mr. Treesh seeks to add claims that defendants have engaged in retaliatory searches in order to create confusion in his mind and to have him sanctioned in hopes that his complaint would thereby be dismissed (#43). The defendants oppose this motion to amend on the same grounds they opposed the August 12, 2010 motion.

D. The October 8, 2010 Motion to Amend Complaint

Mr. Treesh wants to add claims that all facility and staff members have conspired to unlawfully detain him in administrative segregation in order to cause him serious physical harm and psychological abuse with the ultimate objective of killing him (#46). In opposing this motion, the defendants incorporate their previous response to plaintiff's August 12 and October 5 motions.

They also contend that plaintiff's repeated motions to amend serve no valid purpose.

E. The October 19, 2010 Motion to Amend Complaint

Mr. Treesh seeks in this motion (#47) to incorporate alleged videotape evidence showing various unlawful searches and seizures, as well as witness statements regarding alleged retaliatory actions taken against him. He also wants to add to his complaint that Corby Free, the institutional inspector for CCI, denied him a grievance form on October 13, 2010, with which to complain about certain malicious acts allegedly committed by Officer Gilliland on various dates. Mr. Treesh further alleges that Inspector Free threatened to place him on informal-complaint restriction if he continued with his conspiracy theories. The defendants incorporate their previous memorandum in opposition for this and all subsequent motions to amend (## 52,55).

F. The October 22, 2010 Motions to Amend Complaint

Mr. Treesh filed four separate motions on the same date for leave to amend his complaint. In the first (#48), he wishes to allege that unnamed CCI staff members put Officer Coffee up to poking or jabbing him in the ribs knowing that plaintiff would complain about this incident and thereby give them a reason to place plaintiff in segregation. The objectives of the alleged scheme were to stop grievance procedures against Officer Gilliland, to enter plaintiff's cell area and conduct unlawful searches for written correspondence between plaintiff and the institutional correction investigative committee based in Columbus, to force plaintiff back onto the mental health caseload at CCI, to keep plaintiff from legal research and accumulating evidence to support his claims, and to prevent plaintiff from seeing further abusive treatment of other inmates. Mr. Treesh also wishes to alert the Court to the "fact" that over the past four months several unidentified corrections officers have

suggested to him that he should commit suicide

In the second motion (#49), Mr. Treesh seeks leave to amend his complaint to allege that CCI staff members are deliberately and unlawfully placing him in segregation in order to ride roughshod over his rights. Mr. Treesh reports that these unnamed staff members repeatedly searched his cell for legal correspondence while he was in isolation, packed up private information documentation, and then intimidated him into signing pack up sheets through fear of additional retaliation and harassment. Further, he claims to have been denied toothpaste, soap, and shampoo while in isolation, as well as new undergarments for more than eight months. Mr. Treesh also maintains that he has been denied participation in Native American religious ceremonies and meals, as well as possession of religious items as a result of CCI's control of his financial situation. In addition, he complains that staff members have deliberately engaged in acts and omissions designed to elevate his anxiety and stress levels, both of which have been known to kill. Lastly, he accuses unidentified staff members of contaminating his drinking containers with "medication cocktails" at the behest of Officer Gilliland which resulted in plaintiff's extreme dizziness in July 2010.

In his third motion (#50), Mr. Treesh asks leave to amend his complaint to reflect his realization that a large group of unidentified persons have decided to use him as a "boy toy" in order to kill him and to make it appear that he is losing his mind. He also wishes to disclose that each time he has been placed in isolation more and more items of his personal property have come up missing. He theorizes that prison officials then sell these items for personal profit. Mr. Treesh additionally wants to plead the existence of a conspiracy involving the Ross County prosecutor's office and the F.B.I. to cover up the

conspiratorial activity within CCI. Finally, he seeks to increase his prayer for damages to \$275,000 per defendant for violating his constitutional rights under the Fifth, Sixth, and Fourteenth Amendments; \$1,000,000 for his Eighth Amendment claims; and another \$1,000,000 for endangering members of his family.

In his fourth motion (#51), Mr. Treesh seeks leave to add information concerning his allegedly retaliatory placement in segregation. He now "realizes" that this was done in order to control his mail to this Court. His most recent placement on October 5, 2010, was allegedly due to the situation caused by Officer Coffey's poking or jabbing him with a key. Mr. Treesh also wishes to add claims regarding deliberate damage done to his prayer feathers and his placement in isolation for more than one hundred days out of the twenty-two months he has been imprisoned, which has forced him to expend money on lawsuits that he might have used to purchase needed religious items. The remainder of the motion describes a conspiracy by members of a law enforcement task force, a Williams County common pleas judge, and the Ohio Attorney General to maliciously prosecute him due to his refusal to cooperate in an undefined enterprise.

G. The October 28, 2010 Motion to Add Information or Accounts

In this motion (#53), Mr. Treesh seeks leave to add allegations that on October 14, 2010, Inspector Free again refused to provide him a grievance form to complete an informal complaint against Officer Gilliland, a second-shift corrections officer and that Inspector Free also threatened to restrict his privilege to file informal complaints for an even greater length of time should he continue to submit grievances involving a purported conspiracy. Yet another allegation Mr. Treesh wishes to add to his complaint involves a supposed threat by CCI staff to leave him alone for the duration of his sentence if he filed

further grievances. Lastly, Mr. Treesh alleges that Officer Davis read two of his legal letters on October 14, 2010, which had been left on top of plaintiff's property.

H. The November 8, 2010 Motion to Amend Complaint and Add Information

In this motion (#54), Mr. Treesh seeks leave to amend his complaint to reflect that the Ohio Attorney General sent a letter dated October 25, 2010, accusing him of harassing each of the defendants. He states that this charge is untrue and that he is merely making sure that all of his allegations are noted and documented. He also states that he has come to realize that the defendants are not going to stop their psychological warfare or the search of his legal mail until a preliminary injunction is put into play to protect him from physical and mental harm from both CCI staff and other inmates. Mr. Treesh also claims to have discovered ten more complaints recently filed against Officer Gilliland.

I. The November 9, 2010 Motion for Leave to Add Information

In this motion (#56), Mr. Treesh seeks to add various criminal statutes under Title 18 of the United States Code which he believes pertain to this action. He also describes an incident on October 28, 2010, where another inmate allegedly recruited by Officer Gilliland threw a piece of chewing gum in plaintiff's hair. This same inmate purportedly told Mr. Treesh that the State of Ohio was never going to release him, but instead was going to commit him to a mental hospital in retaliation for his complaints to federal court. He filed a complaint against this inmate on November 1, 2010, but the warden then allegedly created a situation whereby plaintiff would have a heart attack or snap and could then be placed back in isolation. Mr. Treesh goes on to allege a pre-incarceration conspiracy involving the State of Ohio and local law enforcement to kill him



by means of an automobile accident.

III.

The Court will grant the August 12, 2010 motion to amend to the extend that the defendants named in the original complaint are being sued in both their official and individual capacities. The defendants have affirmatively stated that they do not object to this proposed amendment. The Court will also grant the September 12, 2010 motion to amend. Judge Smith has already determined that Mr. Treesh may not pursue class-based remedies since no motion to certify class is pending and because Mr. Treesh may not, in any event, act as a class representative (#39). Mr. Treesh's request to withdraw any claim for class-based relief merely reflects that ruling. As for the remainder of the September 12 motion, his claim that the defendants are heavily infringing his own rights to engage in Native American religious practices and participate in ceremonies clearly relate to his original claims. Accordingly, the defendants will not be prejudiced by allowing this amendment.

The Court determines, however, that the defendants would suffer undue prejudice if the other motions for leave were to be granted. These remaining motions for leave to amend or add information will therefore be denied for the following reasons.

On June 11, 2010, the Court entered a scheduling order establishing deadlines for the completion of discovery and the filing of dispositive motions. Although this order did not impose a deadline for the amendment of pleadings, it is obvious that discovery can never be completed if Mr. Treesh is permitted to amend his complaint each time he feels that he has suffered a wrong. Allowing such amendments would prolong this proceeding without any prospect that plaintiff's claims would ever be resolved. See Lyle v. Jackson, 49 Fed.Appx. 492, 494-95 (6th Cir. 2002).

It is also apparent that many of the proposed amendments deal with incidents that allegedly occurred prior to plaintiff's incarceration. There is no reason why he could not have raised these claims earlier. Mr. Treesh is not entitled to unlimited opportunities to cure any perceived deficiencies in his complaint.

The bulk of plaintiff's proposed amendments involve claims which are only tangentially related, or in some cases wholly unrelated, to those which comprise the original complaint. New unrelated claims against new defendants need not be allowed. Hetep v. Warren, 27 Fed.Appx. 308, 309 (6th Cir. 2001); see also George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007)(unrelated claims against different defendants belong in different lawsuits not only to prevent confusion, but to ensure that prisoners pay the required filing fees under the Prison Litigation Reform Act).

Still others fail to meet the plausibility requirements of Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007) and Ashcroft v. Iqbal, 129 S.Ct. 1937 (2009). In particular, the proposed amendments involving alleged conspiracies are implausible and insufficient. It has been uniformly held that in order for a §1983 claim of conspiracy to survive a motion to dismiss, the pleading which sets forth that claim must do so in specific fashion. "It is well-settled that conspiracy claims must be pled with some degree of specificity and that vague and conclusory allegations unsupported by material facts will not be sufficient to state such a claim under §1983." Gutierrez v. Lynch, 826 F.2d 1534, 1538 (6th Cir. 1987). The complaint in question must "allege specific facts showing agreement and concerted actions among the defendants...." Durre v. Dempsey, 869 F.2d 543, 545 (10th Cir. 1989). The failure to allege all elements of a conspiracy, including an agreement or a meeting of the minds among the alleged conspirators, and overt actions in furtherance

of the conspiracy, requires dismissal of the complaint. Woodrum v. Woodward County, 866 F.2d 1121, 1126 (9th Cir. 1989); Gometz v. Culwell, 850 F.2d 461, 464 (8th Cir. 1988); McGillicuddy v. Clements, 746 F.2d 76, 77 (1st Cir. 1984). Those allegations involving various conspiracies which Mr. Treesh proposes to add to his complaint do not satisfy these requirements.

Lastly, many of the proposed amendments or additions contain "claims describing fantastic or delusional scenarios, claims with which federal district judges are all too familiar." Neitzke v. Williams, 490 U.S. 319, 328 (1989). Allowing these amendments would merely be an exercise in futility.

#### IV.

Based on the foregoing reasons, Mr. Treesh's August 12, 2010 motion (#36) to amend his complaint is granted to the extent that the defendants are named in both their official and individual capacities. The motion is denied in all other respects. Mr. Treesh's September 12, 2010 motion to amend (#41) is granted. The remaining motions for leave to amend (## 43, 46, 47, 48, 49, 50, 51, 53, 54, 56) are denied for the reasons stated herein. In order to maintain the discovery and dispositive motions deadlines established in the scheduling order(#32), the Court will not entertain any further motions to amend the pleadings. Accordingly, from this date forward, Mr. Treesh shall not file, and the Clerk shall not accept for filing, any motions for leave to amend plaintiff's complaint and/or to add information or accounts.

#### V.

Any party may, within fourteen (14) days after this Order is filed, file and serve on the opposing party a motion for reconsideration by a District Judge. Fed. R. Civ. P. 72(a). The motion must specifically designate the order or part in question and the basis for any objection. Fed. R. Civ. P. 72(b).

Responses to objections are due fourteen days after objections are filed and replies by the objecting party are due seven days thereafter. Eastern Division Order No. 91-3, pt. I., F., 5. The District Judge, upon consideration of the motion, shall set aside any part of this Order found to be clearly erroneous or contrary to law. Fed. R. Civ. P. 72(a); 28 U.S.C. §636(b)(1)(A).

This order is in full force and effect, notwithstanding the filing of any objections, unless stayed by the Magistrate Judge or District Judge. S.D. Ohio L.R. 72.3.

/s/ Terence P. Kemp  
United States Magistrate Judge